IN THE

Supreme Court of the United States

OCTOBER TERM, 1921

No. 110

WILLIAM IRWIN,

Appellant,

vs.

SAM F. WEBB, County Treasurer, C. W. CUMMINS, County Assessor, et al.,

Appellees.

BRIEF FOR APPELLEES

JAMES M. SHERIDAN,
GEO. D. CHRISTY,
Counsel for Appellees.

R. E. L. SHEPHERD,
County Attorney,
Maricopa County, Arizona,
JOSEPH E. NOBLE,
Deputy County Attorney,
Maricopa County, Arizona,
Of Counsel.

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STATEMENT OF THE CASE.

This action was commenced by the plaintiffs and appellants, hereinafter for convenience designated as plaintiffs, in the District Court of the United States for the District of Arizona to enjoin the defendants and appellees, hereinafter for convenience designated as the defendants, and being the then County Treasurer, County Assessor, County Attor-

ney, County Sheriff and County Supervisors of Maricopa County, State of Arizona, from assessing or levying or collecting any taxes against certain lands, and the interest in certain lands, of the plaintiffs, said lands being in each instance reclamation homestead entries under the Salt River Reclamation project and the plaintiffs being either the original entrymen or assignees of entrymen.

It appears from the pleadings and agreed statement of fact filed in the case, that prior to the levy and assessment of the taxes complained of, the residence, cultivation and improvements required by law in each instance had been completed and due proof thereof made and such proof duly accepted by the proper officers of the United States and also appears that such plaintiffs had actually reclaimed, irrigated and grown crops upon not less than one-half of the total acreage embraced in the holdings of each of the plaintiffs respectively, but final proof of reclamation had not been made and final certificate and patent had not been issued by the proper officers of the United States nor had the farm unit for the Salt River project been then established by the Secretary of the Interior.

An agreed statement of facts was filed in the case and the cause was argued and submitted to the court, the Hon. David P. Dyer, United States Judge for the Eastern District of the State of Missouri sitting in the place of the Hon. William H. Sawtelle, United States Judge for the District of Arizona, and a decree was made and entered in the

cause dismissing plaintiffs bill of complaint on the merits, from which said decree this appeal was taken.

The plaintiffs have set up ten assignments of error and grouped their assignments under four separate issues, such issues as stated by the plaintiffs being as follows:

"Issue I.

Can County taxing authorities of the State of Arizona assess and levy taxes upon, and enforce collection of such taxes against Homestead Land entered under the United States Homestead Laws, (Acts of May 20, 1862, Ch. 75, 12 Stat. L. 392; June 17th, 1902, Ch. 1093, Sec. 1-32, Stat. 388, and amendments thereof and supplements thereof) by sale or other means, before the establishment of the farm unit for the reclamation project, within which such homesteads lie, and before compliance with such Homestead Entrymen with the requirements of the United States Government as to payment of fees due the federal government as to lands, or reclamation, irrigation, cultivation, or improvement thereof, and before the making of the final proof or the issuance of final certificates to said entrymen?"

Issue II.

Can County taxing authorities of the State of Arizona indirectly tax homestead lands entered under the United States Homestead Law, previous to the fixing of the farm unit for the

reclamation project within which such entries lie, and before compliance by said homestead entrymen with the requirements of the United States Homestead Law as to the payment of fees due the United States Government for said lands, reclamation, irrigation, cultivation or improvement thereof, by attributing to said entrymen an 'equity' in such homestead lands and thereupon taxing said equity, selling said homestead lands and delivering possession thereof to purchasers at tax sales?"

"Issue III.

Can the County taxing authorities of the State of Arizona retroactively for a period of years antedating their official incumbency, by ex parte resolution, levy taxes against homestead lands entered under the United States Homestead Law before the establishment of the farm unit for the reclamation project within which such lands lie, and before compliance by such homestead entryman with the requirements of the United States government for the obtaining of title to such lands as to payment of fees due the Federal Government for such lands and the reclamation, irrigation, cultivation and improvement thereof and before the making of the final proof or the issuance of final certificates for said lands?"

"Issue IV.

Can County taxing authorities of the State of Arizona by an ex parte resolution after the institution of a suit to restrain the collection of taxes on Homestead Entries under the U. S.

Homestead Laws, and after the service of process upon such County authorities and the making of previous transfers of such Homestead land to bona fide assignees under such County tax records as originally made, without notice to, or a hearing of the taxpayers concerned, alter or change, retroactively for a period of years antedating the inception of their official incumbency, the assessment or Tax records of such County, which records as originally made disclosed that such homestead lands had been assessed and taxed precisely as any other lands in private ownership previous to or prior to compliance with the United States Homestead Laws by the entrymen thereof as to payment of fees due the government on the making of final proof and before the issuance of final certificates therefor, by assessing an alleged "equity" of Entrymen in the lands involved?"

Plaintiff's issues I and II involve different phases of the same legal question, namely:

Can the taxing authorities of the State of Arizona, and County of Maricopa, levy, assess and enforce collection of taxes upon the equity or interest of entrymen and assignees of entrymen in the lands embraced in reclamation homesteads after such entrymen have completed the residence, cultivation and improvements required by law, and have made due proof of such residence, cultivation and improvements and such proof has been accepted, but before patent finally issues?

Plaintiff's issues III and IV involve different phases of another legal question, namely:

If the taxing authorities of the State of Arizona and County of Maricopa had power to tax the equities and interest of the holders of such reclamation homesteads, was such power properly exercised by them in the instant case?

Defendants will confine their argument to the two questions of law above stated.

ARGUMENT

As to the first question, namely:

> "Can the taxing authorities of the State of Arizona, and County of Maricopa, levy, assess and enforce collection of taxes upon the equity or interest of entrymen and assignees of entrymen in the lands embraced in reclamation homesteads after such entrymen have completed the residence, cultivation and improvements required by law, and have made due proof of such residence, cultivation and improvements and such proof has been accepted, but before patent finally issues?"

Defendants respectfully submit that under the Statutes of the United States and the regulations of the United States Land Department, in accordance with law and the construction placed hereon by the courts, a reclamation homestead entryman after residence, cultivation and improvements required by law have been completed, and after the proof of such residence, cultivation and improvements has been duly made and approved, has such an interest

in the lands embraced in such entry as is a vested property right and as such is subject to taxation by State and County authorities. After proof of residence, cultivation and improvements has been made and accepted, an entryman need no longer reside on the land, and it appears from the complaint in this cause that the plaintiff William Irwin is now a resident of the State of California. By such proof and acceptance such entryman acquires an immediate and vested interest in and to the lands embraced in such entry and under the law he can thereupon mortgage the same or transfer the same by assignment and his interest therein is also an inheritable interest which descends to his heirs. As soon as the farm unit has been established he can at any time apply for and receive a patent from the United States by

> (a) Making satisfactory proof that at least one-half the lands embraced in the said farm unit have been irrigated, sown to crops and average crops grown thereon, and
>
> (b) Paying to the Government all water charges and payments *then due* to the Government, and
>
> (c) Paying to the United States the sum of $1.50.

Of these three conditions it would seem that but one remained unsatisfied for as to "a," the agreed statement of facts in this case, Folio 73, page 45, Transcript of Record, reads as follows:

> "That as to the land described in Plaintiff's Exhibit C, attached to his bill of complaint, approximately but not less than one-half of each tract thereof as it was assessed before being taxed by the county authorities, had been cleared of brush, trees, and other encumbrances, provided with sufficient laterals, except for changes incidental to reduction to farm units, for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, cultivated and irrigated under the Salt River Reclamation Project, and had had average crops grown thereon."

showing that all required reclamation has been done.

As to "b," under the provisions of law and the regulations promulgated by the Secretary of the Interior and the custom and practice followed under United States Reclamation projects, no water service under any United States Reclamation project is made to any lands lying under such project whenever or so long as any payments or charges due to the United States government are delinquent or in arrears. These lands having been irrigated as in said statement of facts set forth, perforce all payments and charges then due the government were paid or water for such reclamation service would not have been furnished.

Therefore, only "c," namely: the payment to the United States of $1.50 for each holding for the purpose of securing patent, remained to be done, subject, of course, however, to the conforming of such entry or holding to the farm unit as fixed by the Secretary of the Interior. But if, upon the fixing of

such farm unit any entry or holding should prove to be in excess of the amount as determined and established by the Secretary of the Interior as the farm unit under the Salt River project and thereby it became necessary for such holder to reduce the acreage of such holding, there existed in law full power of assignability and transfer as to such excess and such holder having the right to sell and transfer the same by assignment to any person qualified in law to take such assignment and having the further power to collect and receive for his own use and benefit the actual market and cash value thereof, clearly he possessed a vested interest which was and is a property right and as such property right should be subject to taxation by the State and County authorities of the State of Arizona.

In passing upon an almost identical state of facts as disclosed in the instant case, Judge Dietrich, Judge of the United States District Court for the District of Idaho in the case of United States vs. Canyon County, reported in 232 Federal Reporter at 985, reading page 991, says:

> "The legal title thereto remains in the government, the entrymen have not paid in full for their water rights, and they have not brought the requisite acreage under cultivation and irrigation. Still it must be apparent that they have something more substantial than a mere contingent interest. Upon proof of compliance with the general homestead law and the issuance of a certificate to that effect, they became possessed of rights of which they can be

divested only through their default or voluntary relinquishment. It is a vested interest which they have, and not a bare option to purchase when and if the government sees fit to sell. They not only have the full and exclusive use of the lands, but they may by assignment transfer them in whole or in part, and thus realize in money the entire value thereof. Act June 23, 1910, 36 Stat. 592. They may also mortgage, and the mortgagee may foreclose and protect himself by bidding at the foreclosure sale. General Reclamation Circular of Sept. 6, 1913, p. 28. On the death of the entryman his heirs succeed to his rights. If, then, the entryman has the valuable right of possession and use, and the unqualified power to acquire the legal title—in other words, if he has a vested interest which may be sold, mortgaged, and inherited—it is difficult to see why it may not also be taxed without impairing or clouding the title of the United States or infringing upon its rights. The interest would seem to be quite as substantial as, and of equal dignity to, the right of the holder of an unpatented mining claim, and it has been repeatedly held that such a claim is taxable. Elder v. Wood, 208 U. S. 226, 28 Sup. Ct. 263, 52 L. Ed. 464, and cases therein cited."

The mere fact that the right of assignment is limited to a certain class of persons, namely, persons eligible in the first instance to make homestead entry, cannot change the right of the holder from a vested interest into a mere contingency, nor can it defeat or nullify the right of the taxing authorities of the State and County to enforce the collection of

taxes levied and assessed upon and against such right and equity.

This question was also discussed by Judge Dietrich in the said case of United States vs. Canyon County, *supra*, reading at page 990, and the learned Judge disposes of it in the following language:

> "The suggestion that the assessment is invalid because, under one of the provisions of the statutes and of the patent above quoted, no person may hold more than one irrigable farm unit on a project, and that therefore entrymen would be disqualified from becoming purchasers at a possible sale, is without substance. It would be quite as reasonable to argue that, because the state limits the real estate holdings of corporations and disqualifies certain aliens from holding real estate at all, it is therefore powerless to levy a tax on real property. Qualified purchasers for these lands, in case they are offered at a tax sale, there doubtless would be in great numbers, and the county need have little concern lest the tax fail for the want of bidders. However, that may be, it is a consideration which the plaintiff is not in a position to urge."

The Supreme Court of Idaho has also passed upon the identical questions involved in the instant case in the case of Cheney vs. Minidoka County, reported in 26 Idaho Reports 471, 144 Pac. 343, and in an exhaustive opinion held that the interest of an entryman in a reclamation homestead after proof of residence, cultivation and improvements has been made and accepted, was a vested property right and prop-

erly taxable by the tax authorities of a State and County.

The above cited cases of United States vs. Canyon County and of Cheney vs. Minidoka County are the only cases, other than the instant case decided by Judge Dyer, and from whose decree this appeal is taken, which diligence of counsel has been able to discover, where the exact issues of fact and questions of law herein involved have been judicially determined, and the opinions of Judge Dietrich in the case of United States vs. Canyon County and of the Supreme Court of Idaho in the case of Cheney vs. Minidoka County would seem to be as strong argument in support of defendants' position as could be made. There are, however, many cases in the books where the general principle involved has been passed upon.

In the case of Central Pacific Railway Company vs. Nevada, reported in the 162 United States Reports, at page 512, this court held that the possessory claim to railroad lands was taxable by the State tax authorities.

The same view was taken by this court in the case of Northern Pacific Railway Company vs. Myers, reported in the 172 United States Reports, 589.

And this court held in the case of Maisch vs. Arizona, reported in 164 United States 599, that the possessory and equitable right of the owner of a land grant was subject to taxation although the grant may not have been confirmed.

And this court in the case of Baltimore Ship Building and Dry Dock Company vs. Baltimore, re-

ported in 195 United States Reports at page 375, held that a State may tax different estates in land to different parties and sell only the interest of the parties making default. In said case the tax was levied upon the land itself and not merely the Dock Company's interest, and the court says in that regard, on page 381:

> It may tax a life estate to one and the remainder to another and sell only the interest of the party making default. With regard to what the State of Maryland has done and what are the purport and attempted effect of the tax in this case, we follow the Court of Appeals. That court treated the tax and the lien as going only to the Dock Company's interest in the land, although probably by an oversight it neglected to modify the judgment according to its own suggestion so as to show the fact. That only the company's interest was taxed is shown by the reduction of the assessment on account of the condition. Of course it does not matter what form of words the judgment employs, when its meaning is thus declared by the court having the matter under its control."

In the instant case the tax was only levied and assessed and intended to be levied and assessed against the equity of the reclamation homesteader for in the defendants' answer, Paragraph 4, Folio 41, page 23, Transcript of Record, it is expressly set forth as follows:

> "That in the assessing and levying of taxes complained of in plaintiffs bill of complaint,

the duly authorized officers intended to assess and levy, and did assess and levy, taxes upon and against only the respective equities in the lands described and referred to in the plaintiffs bill of complaint of the persons in whose name said property was assessed and did not assess or levy or intend to assess or levy any taxes whatsoever upon or against any right, title or interest of the United States in said lands; and that none of the defendants have any intention to or will, enforce, or make any effort to enforce, collection of any taxes upon any right, title or interest of the United States in or to any of the lands described in the plaintiff's bill of complaint."

And in the agreed statement of facts, in paragraph 14 thereof, Folio 68, page 12, Transcript of Record, there appears the following:

"That in levying taxes upon said reclamation homestead lands and in so filing suit to enforce collection of said taxes, the tax officials of said Maricopa County at all times have claimed *not* to tax or attempt to enforce collection of taxes against any right, title, lien, or interest of the United States of America, in or to said lands, or any part thereof, nor to interfere with the lien reserved by the United States Government on account of the reclamation of said lands; and that the defendants claim they will not in the future attempt to tax or enforce the collection of taxes against any interest in any of the lands described in the plaintiff's bill of complaint, other than the interest and equity of the homestead entrymen, or their assigns."

so that there is not involved in the instant case any question of the taxing or attempting to tax any interest of the United States, but only the right to tax the equity or interest of the holder of such lands under such reclamation homestead and after due proof of residence, cultivation and improvements has been made and accepted.

Under the Salt River project wherein the lands involved in this case are located, but three of the 20 annual installments payable to the United States on account of construction and betterment charges have been paid and seventeen installments remain still owing and unpaid and become due annually respectively.

It would seem that if any United States Reclamation Project is to prove a success, and if the persons making reclamation homestead entry thereunder are to prosper and succeed, there must be provided for them adequate police protection for the security of their lives and property, there must be provided adequate school facilities for the education of their children of school age, there must be built and maintained adequate roads and highways to enable such entrymen to market their crops, to travel to and from their entries to convenient and accessible towns and settlements for necessary supplies and equipment and for church, social and educational advantages. Such schools, roads, market facilities and police protection can only be furnished and maintained by the governmental authorities of the State and County by moneys raised through the

medium of taxation and an entryman of a reclamation homestead whose property and welfare is dependent upon the existence of such police protection, such schools, road, market and religious and social facilities, should not escape the payment of his proper proportion of his taxes necessary to provide, maintain and furnish the same. If the plaintiffs can escape taxation and the payment of their fair proportion of the burdens of government until after they receive patents from the United States, then they may by postponing application for patent and postponing the payment of the $1.50 fees to the government upon the filing of such application for patent, until such time as all payments owing and to become due to the United States for construction and betterment charges and water costs and charges, have been made and completed, thereby evade their just burdens in carrying on and in support of government for a further period of seventeen years; the effect of which in a community where the acreage held in such homestead entries is large as is the case under the Salt River Project must be to materially cripple local governmental agenices through the lessening of public funds derived from taxation, or else on the other hand to compel the State and County authorities to levy such additional taxes upon the entryman's neighbors who have received patent to their lands as will make up the deficiency occasioned by the non-assessment of the entryman's lands for taxation.

In the case of the United States vs. Canyon

County, *supra*, and reading at page 991, the Court said:

> "Generally speaking, one who has the right to property and is not excluded from its use and enjoyment should not be permitted to use the legal title of the government to avoid his just share of taxation. Wisconsin Central R. R. v. Price, 133 U. S. 496, 505, 10 Sup. Ct. 341, 33 L. Ed. 687; N. P. R. R. Co. v. Patterson, 154 U. S. 130, 14 Sup. Ct. 977, 38 L. Ed. 934; Maish v. Arizona, 164 U. S. 599, 17 Sup. Ct. 193, 41 L. Ed. 567; N. P. R. R. Co. v. Myers, 172 U. S. 589, 19 Sup. Ct. 276, 43 L. Ed. 564; Baltimore Ship Building Co. v. Mayor, et al., 195 U. S. 375, 25 Sup. Ct. 50, 49 L. Ed. 242." The United States government by the passing

of the Reclamation Act, Act of June 17, 1902, and the various Acts supplemental and amendatory thereto, has entered upon a comprehensive plan for the reclamation and settlement of its arid lands and for the conservation and utilization of the water resources of the arid West to build up homes and prosperous communities, and the question involved in this case is one which vitally affects every State and County in the arid West.

If reclamation homestead entrymen may postpone their application for patent until all the governmental construction and betterment charges under a reclamation project have been completed and thereby defeat the right of the taxing authorities of the State and County to tax their interests in such reclamation homesteads and by so doing escape the

payment of their fair proportion of their burdens and costs of government necessary, the governmental agencies of the various arid States will be seriously crippled, the settlement of the arid lands postponed and delayed and the general policy of the government hampered in its fulfillment, and the defendants respectively submit that the public policy of the nation and of the various arid states would be best served and promoted by the taxation of the equities of the holders of reclamation homesteads.

As to the second question of law involved in this case, and being:

> "If the taxing authorities of the State of Arizona and County of Maricopa had power to tax the equities and interest of the holders of such reclamation homesteads, was such power properly exercised by them in the instant case?",

defendants respectfully submit that if the power exists in the taxing authorities of the State and County to tax reclamation homesteads in the condition plaintiff's premises in this cause are shown to be, then that power of taxation was properly exercised by the defendants in the instant case.

The Constitution of the State of Arizona provides, Article IX, Section 2:

> "* * * All property in the State not exempt under the laws of the United Staets or under this Constitution, or exempted by law under the provisions of this section, shall be subject to taxation to be ascertained as provided by law."

Title XLIX, Revised Statutes of Arizona, 1913, provides a comprehensive system for the levying and

assessment of taxes, the material provisions of which are:

Paragraph 4846:

> "* * * All property of every kind and nature whatsoever, within this State, shall be subject to taxation, except: * * *"

but none of which exceptions can apply to the interest or equity of holders of reclamation homesteads.

Paragraph 4847:

> "The term 'real estate' whenever used in this act shall be taken to mean and include the ownership of, any land or patented mine within the state; and the claim by possession of any person, firm, corporation, association, or company, to any land or patented mine shall be listed under the head of real estate. * * *"

Paragraph 4849:

> "All taxable property must be assessed at its full cash value. The term 'full cash value' whenever used in this act shall mean the price at which property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property is usually sold, and not the price which might be realized if such property was sold at a forced sale."

Paragraph 4867:

> "Any property discovered to have escaped assessment for the year 1913, or any year or years thereafter, must be assessed at its full cash value for each year it escaped assessment and also at its full cash value for the current year."

Paragraph 4881:

"At its June meeting said board (of equalization) may change any valuation, whether such valuation was fixed by the owner or by the assessor. If in its judgment, from the information then possessed by it, the board shall believe it to be right to add to the assessed value of any property, it shall cause this fact to be inserted in the advertised notice hereinafter provided to be given; but no assessment can be raised by the board unless it is included in such advertised notice. A notification of said proposed raise shall be mailed to the one to whom said property is assessed."

Paragraph 4883:

"The board of equalization shall meet on the following first Monday of July, at nine o'clock in the forenoon, at their office, and shall remain in session not longer than the second Monday in July. It shall at once proceed with the consideration of the assessments specified in the advertised notice, and as part of its proceedings proof of the publication of said advertised notice shall be made, as in other cases, and filed with the board. This publication, so proved, shall be conclusive evidence, in all cases, that the ones named therein received due and legal notice that the property described therein would be considered by the board at its July meeting, that it would then decide whether the assessed value thereof should or should not be raised, and that the one owning the property and all others interested therein had full opportunity to appear and resist such increase."

Paragraph 4884:

"At said hearing the board shall have the

power to issue compulsory process requiring the attendance of any person or persons whom they may suspect of being possessed of knowledge of the value, as well as of the amount, of such property, and examine them under oath in relation thereto."

Paragraph 4885:

"The decision of the board as to whether the assessed value of any property shall be increased, and, if so, to what amount, shall be final, as to their determination only, and shall not thereafter be questioned by a taxpayer in any proceeding involving the amount of the taxes legally and equitably due on said property, unless an appeal is taken as hereinafter provided."

Paragraph 4887:

"Any person, firm or corporation, dissatisfied with the amount of his, their, or its assessment as fixed by the board of equalization, may appeal from the action of said board to the superior court of the county in which said board holds its sessions, on or before the fifteenth day of September following the adjournment of said board."

Paragraph 4888:

"The intent and purpose of the foregoing section is to have all property and subjects of taxation assessed at their full cash value, and for this purpose the power and authority conferred by the foregoing section upon the court shall be liberally construed. But said court is expressly prohibited from reducing the valuation of any property below its full cash value."

Paragraph 4926:

> "The county treasurer shall make diligent endeavor to collect all taxes upon said 'back tax book,' and whenever he finds that any taxes therein have been paid, he shall report that fact to the county board of supervisors, giving the name of the officer or person to whom such taxes were paid, and he shall also report to the said board all cases of double assessment or other errors, and thereupon said board shall cause the necessary action to be taken and entries to be made."

Paragraph 4944:

> "The entries made in the county treasurer's books, the records of the board of supervisors, the assessment and tax roll, and the warrants attached thereto, the delinquent list, as herein provided, or a certified copy thereof, shall be prima facie evidence in all judicial proceedings and in all courts of this state. And no want of description or misdescription, or irregularity in the description, or the property assessed upon the roll, if it can be ascertained or proved by any proper or competent evidence what property is intended, shall invalidate the assessment, but the same shall be sufficient and be considered valid both in law and equity."

As hereinbefore stated, the pleadings of the defendants and the agreed statement of fact both clearly show that the only property intended to be assessed for taxes was the equity and interest of the reclamation homestead holder and there was no intent or purpose to tax the interest of the United States.

Moreover, it appears from the agreed statement of fact that there is no question as to the fairness or justness of the amount of the assessment made or the tax levied for in paragraph 20 of said statement of facts, Folio 72, page 44-45, Transcript of record, there appears the following statement of fact:

> "* * * That no complaint is made as to excessiveness of the taxes involved. That at all times when the taxes complained of were assessed the valuations placed for purposes of taxation upon the reclamation homestead lands assessed were in each instance an amount not to exceed the then cash value of the rights of the holder of said lands, which rights might be assigned pursuant to the provisions of the Reclamation Act and the rules and regulations embodied in the General Reclamation Circular; and that during the years for which the taxes complained of were assessed it has been a common practice among homstead entrymen similarly situated to the plaintiff, and the assignees of such entrymen, to assign for the full value of their rights thereto the whole or parts of their said reclamation homestead lands. * * * "

so it is an admitted fact in this case that the valuation placed for tax purposes upon the interest of the plaintiffs in the lands involved herein was not to exceed the cash value of the assignable rights of such holder therein, and that no complaint is made that the tax levied and assessed was excessive in amount. Hence, if the tax be reasonable and proportionate to the value of the equity and assignable rights and interest of the holder of such reclamation homesteads,

no lawful objection thereto could be made by the holder of such rights for he is in nowise damaged, and even had he made objection to the amount of such valuation and tax, in view of the agreed statement of fact, such objection must have been unavailing.

It being agreed in the agreed statement of fact that the intent of the taxing authorities was only to tax the equity and interest of the holder of such reclamation homesteads even though the assessment in the first instance appeared upon the books as against the lands and not as against such equity or interest, under the provisions of paragraph 4944, *supra*, the plaintiffs could not have complained for they were not injured, nor have they just cause for complaint that the Board of Supervisors later, upon the institution of this action in the court below, caused the records of the County Treasurer's office to be corrected by inserting before the description of the lands the words "equity in" as that only expressed and made clearer the true intent and purpose of the tax authorities in the first instance, and would seem to be completely covered by said paragraph 4944, *supra*, and any correction of any description could not injure or prejudice the plaintiffs in view of the agreed statement of fact that there was no complaint as to the excessiveness of the tax or no unjust or unfair values placed upon the equity and rights of the plaintiffs therein, so that the adding of the words "equity in" was but the correction of an error and within the power of the Board of Supervisors under the provisions of paragraph 4926, *supra*.

In this connection the attention of the Court is called to the fact that in the case of United States v. Canyon Company, *supra*, as in the case at bar, that at the time the suit was commenced it appeared from the face of the assessment book that all the lands were assessed in the same manner as other lands privately owned without excepting the lien or interest of the government, and shortly after the service of process, at a meeting of the Board of County Commissioners, an order was entered authorizing and directing the Assessor to insert before the name of each taxpayer the words "equity of" thus expressly limiting the assessment to such equity as the person named had in the tract of land described and by implication recognizing an exemption in favor of the government.

In the case of Baltimore Shipbuilding Company vs. Baltimore, *supra*, the tax was originally levied upon the land and not upon the Dock Company's interest and no correction was ever made of the assessment but as long as under the law the interest of the government could not be taxed or sold for the enforcement of any tax levy, such assessment was held good.

WHEREFORE, it is respectfully submitted:

1. That the right, interest and equity of the plaintiffs in and to the lands and the reclamation homesteads described in plaintiffs' complaint constitutes property and is a property right which is subject to taxation by the taxing authorities of the State and County.

2. That the levy and assessment of taxes upon the plaintiff's interest in and to their said reclamation homestead entries was duly and properly made and that the same constitutes a lien upon such interest in favor of the State and County which can be enforced in the manner provided by law.

3. That the decree of the United States District Court for the District of Arizona from which this appeal is taken, was proper and correct under the pleadings and agreed statement of facts filed and should be by this Court affirmed.

Respectfully submitted,

Deputy County Attorney for Maricopa County, Arizona.

Counsel for Defendants and Appellees.

County Attorney for Maricopa County, Arizona.

Deputy County Attorney for Maricopa County, Arizona.

Of Counsel.

IN THE

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No. 110.

WILLIAM IRWIN, Appellant, vs. SAM F. WEBB, County Treasurer, C. W. CUMMINS, County Assessor, L. M. LANEY, County Attorney, J. G. MONTGOMERY, County Sheriff and J. W. BRADSHAW, W. K. BOWEN, and C. W. PETERSON, County Supervisors of Maricopa County, State of Arizona, Appellees.	APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

MOTION FOR SUBSTITUTION OF PARTIES DEFENDANT

M. J. DOUGHERTY,
PATRICK H. LOUGHRAN,
G. A. RODGERS,
ERNEST W. LEWIS,
F. H. SWENSON,
Attorneys for Appellant.

TRIBUNE JOB PRINT

Due service of the within and receipt of a copy thereof, are hereby admitted this.....day of December, 1921.

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Counsel for the Defendants and Appellees.

IN THE

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OCTOBER TERM, 1921

No. 110.

WILLIAM IRWIN,
Appellant,

v.

SAM F. WEBB, County Treasurer of Maricopa County, State of Arizona, et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA

Motion to Substitute, as Appellees, Vernon S. Wright, Present County Treasurer, in The Place of Sam F. Webb, Former County Treasurer; Harry Peirce, Present County Assessor, for C. W. Cummins, Former County Assessor; R. E. L. Shepherd, Present County Attorney, for L. M. Laney, Former County Attorney; Guy F. Vernon, Present County Supervisor, for W. K. Bowen, Former County Supervisor, and C. S. Steward, Present County Supervisor, for C. W. Peterson, former County Supervisor.

IN THE

Supreme Court
of the United States

OCTOBER TERM, 1921

WILLIAM IRWIN,
Appellant,

vs.

SAM F. WEBB, County Treasurer, C. W. CUMMINS, County Assessor, L. M. LANEY, County Attorney, J. G. MONTGOMERY, County Sheriff and J. W. BRADSHAW, W. K. BOWEN, and C. W. PETERSON, County Supervisors of Maricopa County, State of Arizona,
Appellees.

No. 110

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA

MOTION TO SUBSTITUTE AS APPELLEES, PERSONS WHO HAVE SUCCEEDED SEVERAL OF THE ORIGINAL DEFENDANTS IN CERTAIN COUNTY OFFICES.

Come now William Irwin, the appellant, by his counsel, and suggesting to the Court the retirement from office, because of expiration of term, of cer-

tain of the original defendants, and the election, qualification and assumption of office of their successors, respectfully moves the court that substitution as appellees in this case be made as follows, to-wit:

Vernon S. Wright, present County Treasurer, in the place of Sam F. Webb, former County Treasurer; Harry Peirce, present County Assessor, for C. W. Cummins, former County Assessor; R. E. L. Shepherd, present County Attorney, for L. M. Laney, former County Attorney; Guy F. Vernon, present County Supervisor, for W. K. Bowen, former County Supervisor, and C. S. Steward, present County Supervisor, for C. W. Peterson, former County Supervisor.

The above entitled suit was brought on December 13th, 1919, in the United States District Court for the District of Arizona, by William S. Irwin, a citizen of the State of California, in his own behalf and on behalf of Reclamation Homestead Entrymen Taxpayers of the Salt River Reclamation project, Maricopa County, State of Arizona, against Sam F. Webb, County Treasurer; C. W. Cummins, County Assessor; L. M. Laney, County Attorney; J. G. Montgomery, County Sheriff; and J. W. Bradshaw, W. K. Bowen and C. W. Peterson, County Supervisors of said County of Maricopa, State of Arizona. They being the taxing authorities of said County and State, to restrain said County authorities and their successors in office from assessing, levying or collecting taxes against the United States homestead lands of the plaintiff and others similarly situated, previous to the making of final proof by them and the issuance of final certificates therefor, by the proper officers of the land department of the United States Government. Following the overruling of motions to strike portions of defendant's

answer, and motion of plaintiff for judgment on the pleadings, the case was submitted to the Court for decision upon the pleadings and an agreed statement of facts, resulting in a decree of the United States District Court for the District of Arizona, made March 13th, 1920, dismissing plaintiff's bill of complaint upon the merits. From the rulings of the Court and the decree made and entered, an appeal was prayed and the same being allowed, the case was brought to this court.

As the said Webb, Cummins, Laney, Bowen and Peterson were made parties solely in their respective official capacities, and in order to prevent abatement of the appeal as to the county treasurer, county assessor, county attorney and two of the county supervisors, it is respectfully requested that the substitution moved be granted.

M. J. DOUGHERTY,
PATRICK H. LOUGHRAN,
G. A. RODGERS,
ERNEST W. LEWIS,
F. H. SWENSON,

December, 1921. Attorneys for Appellant.